

REMARKS

The Office Action has been received and carefully considered. Claims 30-36 and 45-59 are pending in this application. By this Amendment, claims 30, 55, 58 and 59 are amended.

No new matter has been added by this Amendment. Support for the amendments may be found in paragraphs 0066-0067, 0085-0087, 0096, and in the drawings, of the published patent application 2002/0194098, for example.

Reconsideration of the current rejection and objections in the pending Office Action is respectfully requested based on the following remarks.¹

A. **The Comments Regarding 35 U.S.C. 112**

In the “Response to Arguments” (in paragraphs 4, 11, 12 and 13), the Office Action sets forth comments regarding alleged deficiencies under 35 U.S.C. 112. Applicant notes that a formal statement of rejection under 35 U.S.C. 112 first or second paragraphs does not appear to be present in the Office Action.

As set forth above, the claims are variously amended to address the alleged deficiencies and to further clarify Applicant’s claimed invention. Further, Applicant submits that the Examiner’s questions in paragraph 6 (pages 3-4) of the Office Action are addressed either by the amendments to the claims and/or in paragraphs 0066-0067, 0085-0087, and 0096 of the published patent application 2002/0194098, for example.

¹ As Applicant’s remarks with respect to the rejections in the Office Action are sufficient to overcome such rejections, Applicant’s silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

In view of the foregoing, it is respectfully requested that the aforementioned rejections under 35 U.S.C. 112 be withdrawn.

B. The 35 U.S.C. 103 Rejection

On page 6 of the Office Action, claims 30-36 and 45-59 are rejected under 35 U.S.C. §103 as being unpatentable over Dellinger (U.S. Patent No. 7,089,201) in view of in view of Arena et al (US 20020184129). This rejection is hereby respectfully traversed.

As set forth in M.P.E.P 706.02(j), 35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. M.P.E.P 706.02(j) indicates that after indicating that the rejection is under 35 U.S.C. 103, the Examiner should set forth in the Office Action:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
- (B) the difference or differences in the claim over the applied reference(s),
- (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and
- (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

M.P.E.P 706.02(j) references the well known requirements of Graham v. John Deere. Further, M.P.E.P 706.02(j) notes that it is important for an Examiner to properly communicate the basis for a rejection so that the issues can be identified early and the Applicant can be given fair opportunity to reply.

On pages 6-8, the Office Action sets forth various assertions in support of the proffered 35 U.S.C. 103 rejection. In particular, on page 6, line 18 - page 7, line 10, the Office Action asserts

... Dellinger teaches an adjustment module for comparing the periodic retirement income payment amount and the guaranteed minimum periodic retirement income payment amount, and for outputting to the user at least the guaranteed minimum periodic retirement income payment amount, **with the adjustment module storing a balance, associated with the user and the guaranteed minimum periodic retirement income payment amount, in an adjustment account if the periodic retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount** (see at least col. 8, lines 35-50, col. 8, line 66 - col. 9, line 5). Dellinger does not specifically teach wherein the equity module determines that that payment amount. However, Arena teaches wherein a periodic retirement income payment amount is determined, by the equity module, to be greater than, equal to, or less than a guaranteed minimum periodic retirement income payment amount, such determination performed based on whether the income generating payments received are received according to a payment schedule (see at least paragraph 47). ...

(emphasis added)

Applicant respectfully maintains that such assertions are unsupported. In the referenced portion of Dellinger, Dellinger describes:

Another illustrative example follows, using a prospective formula. Again, this is merely one example of an approach the administration of which is covered under this invention to handle variable income benefits in other than the conventional manner described earlier. In this approach, a guaranteed minimum variable income benefit is established below which the benefit payment will not fall. However, in the event the benefit payment calculated without regard to the minimum falls below the minimum benefit payment guaranteed, **a portion of the variable annuity benefit reserve held by the insurer will be liquidated in an amount sufficient to cover the shortfall.** This will result in reduced benefits in the long term when performance of the funds might otherwise dictate a larger benefit payment.

(emphasis added)

However, of note, such disclosure of Dellinger fails to describe manipulation of a “balance”, as recited in claim 30. Rather, such disclosure of Dellinger simply describes liquidation of a reserve held by the insurer. That is, Dellinger’s teachings of “a portion of the

variable annuity benefit reserve held by the insurer will be liquidated in an amount sufficient to cover the shortfall” simply fails to teach the features of claim 30.

Also, claim 30 was previously amended to further recite that the balance is in particular associated with the user and the guaranteed minimum periodic retirement income payment amount. In contrast, Dellinger describes (column 8, lines 44-45) that the variable annuity benefit reserve is held by the insurer. Dellinger fails to describe that the variable annuity benefit reserve is in particular associated with the user. Applicant notes that the Examiner acknowledges this argument on page 3, lines 15-18. However, the Office Action does not appear to directly respond to such deficiency of Dellinger.

Relatedly, looking to the referenced teachings of Dellinger at column 8, line 65 - column 9, line 3; Fig. 5; and Dellinger at column 6, lines 31-35, Applicant respectfully submits that “reducing the number of units used to calculate future benefit payments (as described by Dellinger) is simply a fundamentally different concept vis-à-vis that claimed by Applicant. That is, Applicant submits that Dellinger fails to teach the features, as set forth above in claim 30, that the system:

aggregates the difference value with a balance stored in an adjustment account, the adjustment account associated with the user and the guaranteed minimum periodic retirement income payment amount, and

the difference value being a positive value if the periodic retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount, such that the difference value increments the adjustment account; and

the difference value being a negative value if the periodic retirement income payment amount is greater than the guaranteed minimum periodic retirement income payment amount, such that the difference value decrements the adjustment account.

In particular and relatedly, Dellinger fails to teach the claimed manipulation of the “difference value” and the various related features.

Applicant submits that Dellinger fails to teach the features relied upon in the 35 U.S.C. 103 rejection. As a result, Applicant submits that the 35 U.S.C. 103 rejection is deficient. For at least these reasons, Applicant respectfully submits that claim 30 is allowable over Dellinger. Independent claims 55, 58 and 59 are allowable for similar reasons.

Regarding claims 31-36, 45-54 and 56-57, these claims are variously dependent upon independent claims 30, 55, 58, and 59. Thus, since the independent claims should be allowable as discussed above, the dependent claims should also be allowable at least by virtue of their dependency on such independent claims. Moreover, these claims recite additional features which are not disclosed, or suggested, by the applied art taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection be withdrawn.

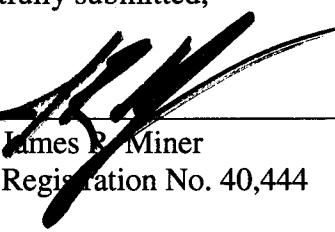
C. Conclusion

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees and additional claim fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

By:


James R. Miner
Registration No. 40,444

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HUNTON & WILLIAMS, LLP
1900 K Street, NW
Washington, D.C. 20006
Tel. (202) 955-1500
Fax (202) 778-2201